IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1979

No. 79-492

ROBERT MICHAEL FUNGAROLI,

Appellant

vs.

JUDITH DIANE FUNGAROLI,

Appellee

APPEAL TO THE UNITED STATES SUPREME COURT TO REVIEW THE DECISION OF THE NORTH CAROLINA SUPREME COURT

JURISDICTIONAL STATEMENT

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September 10, 1979

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APPEAL TO THE UNITED STATES SUPREME COURT TO REVIEW THE DECISION OF THE NORTH CAROLINA SUPREME COURT

JURISDICTIONAL STATEMENT

Appellant, Robert Michael Fungaroli, appeals the judgment of the North Carolina Court dismissing his appeal on June 13, 1979.

OPINIONS BELOW

Appellant filed an appeal to the North Carolina Court of Appeals on June 2, 1978, wherein he contested, inter alia, the propriety of the trial court, i.e., the Civil District Court of Forsyth County,

conducting a temporary alimony hearing at the request of the now appellee-wife without notice to the now appellant-husband and a subsequent alimony award to the appellee. Appellant advanced as his major point of contention that (1) since his property rights were to be affected by said hearing, he was entitled to notice and opportunity to be heard, and (2) that the provisions of N.C. G.S. 50-16.8(e)(infra) dispensing of notice requirements in certain situations were unconstitutional as applied in this case. Appellant centered his contention of unconstitutionality in this case, inter alia, on the fact that neither he nor his attorney of record was notified of the hearing. The Court of Appeals of North Carolina affirmed the trial court's ruling on March 20, 1979. The Supreme Court of North Carolina dismissed the appellant's appeal for lack of a substantial constitutional question by an amended judgment dated June 13, 1979.

JURISDICTION

This action is an appeal from a holding by the North Carolina Court of Appeals and North Carolina Supreme Court that a statute is constitutional. This appeal is brought forward under 28 U.S.C. sec. 1257 (2) and 1257(3). The order of the District Court of Forsyth County is dated March 1, 1978; the opinion of the North Carolina Court of Appeals is dated March 20, 1979; and the order of the North Carolina Supreme Court is dated June 13, 1979. Notice of appeal was filed with the North Carolina Supreme Court on September 4, 1979.

Cases believed to sustain jurisdiction are: Fuentes vs. Shevin, 407 U.S. 67, 32 L.Ed.2d 556, 92 S.Ct. 1893; Sniadach vs. Family Finance Corp., 395 U.S. 337, 23 L.Ed. 2d 349, 352, 89 S.Ct. 1820.

The statute, the validity of which is questioned, is N.C.G.S. 50-16.8(3) found

in Volume 2A of the North Carolina General Statutes at page 852 and reads as follows:

> "(e) No order for alimony pendente lite shall be made unless the supporting spouse shall have had five days' notice thereof; but if the supporting spouse shall have abandoned the dependent spouse and left the State, or shall be in parts unknown, or is about to remove or dispose of his or her property for the purpose of defeating the claim of the dependent spouse, no notice is necessary."

QUESTION PRESENTED

Whether due process guarantees a litigant the right of notice and an opportunity to be heard and, further, whether North Carolina General Statute 50-16.8(e)(infra) which, inter alia, provides that a judge may dispense with notice requirements and due process upon a finding that a litigant, i.e., a supporting spouse within the definition of North Carolina domestic relations law, has abandoned the State and whether the Court may then proceed to conduct a

hearing affecting substantial property rights without notice to the alleged abandoning or fleeing spouse or to his attorney of record who has already made a general appearance in the case.

STATUTES AND RULES

18 U.S.C. 1257(2)

18 U.S.C. 1257(3)

N.C.G.S. 50-16.8(e)

STATEMENT OF THE CASE

In the instant case, appellant(husband/father) filed a custody action under N.C.G.S. 50-13, et. seq., on December 21, 1977. On February 18, 1978, the trial court entered an ex parte order allowing the appellee (wife/mother) specific visitation privileges. On February 24, 1978, the trial court entered an ex parte order that the plaintiff show cause, if any there be, as to why he should not be punished as for contempt for violation of the order of February 18, 1978.

On February 28, 1978, the appellee filed answer and counterclaim for custody of the minor child pursuant to N.C.G.S. 50-13, et. seq., and for alimony pursuant to N.C.G.S. 50-16.1, et. seq. The next day, on March 1, 1978, the appellee filed a motion for alimony pendente lite and attorney's fees; and a hearing was conducted on the same day on said motion, and appellant was ordered to pay temporary alimony. At the time of the hearing ordering temporary alimony, the answer and counterclaim of the appellee had not been served upon the appellant or his attorney of record. Furthermore, at the time of the temporary alimony hearing, neither the appellant nor his counsel of record had been served with any notice of said hearing. The appellant appealed from this order and contended that the beforementioned constitutional rights under the Constitution of the United States

and the Constitution of North Carolina were violated in that said appellant was not given proper notice and/or opportunity to be heard under the circumstances; that essential elements of "due process of law" and "law of the land" are notice and opportunity to be heard or defend in accordance with established rules which do not violate fundamental rights.

On March 6, 1978, a hearing was conducted on the ex parte show cause order arising out of the ex parte order allowing the appellee (wife/mother) specific visitation privileges. Neither the appellant nor his counsel was given any notice of the ex parte order allowing said appellee specific visitation privileges. The appellant appealed from the order entered March 6, 1978, finding him in contempt of said ex parte specific visitation privileges order and contended that his constitutional rights

under the Constitution of the United States and Constitution of North Carolina were violated in the same manner and respect as stated in the preceding paragraph.

These constitutional issues were timely raised in the appeal to the North Carolina Court of Appeals. The appellant contends that the decision and order of the North Carolina Court of Appeals has not addressed itself in any manner to the constitutional issues as presented and that, if it is determined that the North Carolina Court of Appeals did address itself to said constitutional issues, the decision of the said North Carolina Court of Appeals has erroneously ruled upon said issues.

THE QUESTION IS SUBSTANTIAL

THE COURT ERRED IN CONDUCTING AN ALIMONY PENDENTE LITE HEARING AS THE APPELLANT DID NOT HAVE NOTICE OF SAID HEARING.

As the Court conducted a hearing on March 1, 1978, upon appellee's motion for

temporary alimony without the appellant's receiving notice of said hearing, the appellant contends that this lack of notice is not only a violation of his statutory rights under N.C.G.S. 50-16.8(e), but this is also a violation of the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 17 of the Constitution of the State of North Carolina.

The appellee's answer and counterclaim for, inter alia, alimony pendente lite and permanent alimony was filed in the office of the Clerk of Superior Court of Forsyth County, North Carolina, on February 28, 1978. (See Ct. of App. R. pp 16-18) Said document was filed 58 days after the original complaint herein had been served on the appellee. (See Ct. of App. R. p 1) A notice of hearing of the alimony pendente lite hearing was never filed and/or served upon the appellant OR HIS COUNSEL OF RECORD. The ex

parte hearing was conducted on March 1, 1978, (see Ct. of App. R. p 21) the day after the beforementioned answer and counterclaim was filed. Neither appellant nor his counsel was notified of said hearing.

Concerning this lack of notice, the court, in its order, stated:

> "It appearing to the Court that the plaintiff has left the State of North Carolina, no notice was given of defendant's Motion, and, in the opinion of the Court, none is required pursuant to the provisions of N.C. G.S. Sec. 50-16.8(e)."

N.C.G.S. 50-16.8(e) states:

> "No order for alimony pendente lite shall be made unless the supporting spouse shall have had five days' notice thereof; but if the supporting spouse shall have abandoned the dependent spouse and left the State, or shall be in parts unknown, or is about to remove or dispose of his or her property for the purpose of defeating the claim of the dependent spouse, no notice is necessary."

It is obvious that the court was of the opinion that it could conduct the hearing

upon a finding that the appellant "had abandoned the dependent spouse and left the State." The appellant respectfully contends that the provisions of N.C.G.S. 50-16.8(e) are not only unconstitutional as applied herein, but that it was not the intent of the Legislature to allow such a hearing when a party to the litigation has counsel of record.

In the case of McLean vs. McLean, 233 N.C. 139, 63 S.E.2d 138 (1951), the plaintiff brought action against defendant for divorce. The divorce decree was rendered, but thereafter the trial court entered order setting aside the divorce decree for the reason that the plaintiff, who had served the defendant by publication, actually had knowledge of the wife's residence and post office address. The eventual contention of the defendant was, of course, that the defendant's due process of law had

been violated. Justice Devin stated the following, at page 143:

> "The defendant also asserts as reason for vacating the judgment of the County Court that she has thereby been deprived of personal and property rights without due process of law. We do not reach that queation, but it may be observed that under the provisions of the Constitution of North Carolina Art. I, Sec. 17, that no person be deprived of property 'but by the law of the land,' as well as under the parallel provisions of the 14th Amendment to the Constitution of the United States, it is required that an adjudication affecting the marital status and finally determining personal and property obligations shall be heard. Markham v. Carver, 188 N.C. 615, 125 S.E. 409; Bowie v. West Jefferson, 231 N.C. 408, 57 S.E.2d 369; Truax v. Corrigan, 257 U.S. 312, 42 S.Ct. 124, 66 L.Ed. 254. 'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 657."

On this issue, Strong's 3 N.C. Index 3rd, Sec. 24.1, "Constitutional Law," states:

> "Notice and hearing are essential to due process of law under the Fourteenth Amendment to the Constitution of the United States, and Art. I, Sec. 17, of the state constitution."

The appellant brings particular attention and meaning to the following words quoted from McLean vs. McLean, supra:

> ". . . notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections."

Surely, due process of law, at the least, would require notice to the attorney of record herein.

The United States Supreme Court has ruled numerous times that, where the taking of one's property is so obvious, it needs no extended argument to conclude that, absent notice and a prior hearing, a violation of the most fundamental principles of due

process occurs. Coe vs. Armour Fertilizer Works, 237 U.S. 413, 423.

There are decisions to the effect that one may be deprived of property by summary administrative action taken before a vital governmental interest. See e.g., Ewing vs. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950). This principle of exception has been strictly construed. As stated in Fuentes vs. Shevin, 407 U.S. 67, 32 L. Ed.2d 556, 92 S.Ct. 1893, there are "extraordinary situations" that justidy postponing notice and opportunity for a hearing. Boddie vs. Connecticut, 401 U.S. 379, 28 L. Ed.2d at 117. These situations must be truly unusual: First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Secondly, there has been a special need for very prompt action. Thirdly, the State has strict control over

the monopoly of legitimate force. Fuentes, supra, at p. 92. Examples of allowances of summary seizures of property are as follows: (1) to collect internal revenue, Phillips vs. Commissioner, 283 U.S. 589, 75 L.Ed. 1289, 51 S.Ct. 608; (2) to meet the needs of the national war effort, Central Union Trust Co. vs. Garvan, 254 U.S. 554, 566, 65 L.Ed. 403, 408, 41 S.Ct. 214; (3) to protect public from misbranded drugs, Ewing vs. Mytinger & Casselberry, Inc., 339 U.S. 594, 94 L.Ed. 1088, 70 S.Ct. 870; (4) to protect persons from contaminated food, North American Storage Co. vs. Chicago, 211 U.S. 306, 53 L.Ed. 195, 29 S.Ct. 101. Surely, it can be argued that no such "extraordinary situation" existed in the case sub judice.

The paramount point sub judice is that the appellant had an attorney of record who, if given notice, presumably could

have protected his client's interests. As stated in 16 Am.Jur.2d, Sec. 573, "Constitutional Law," p. 579, a state or Federal court which arbitrarily refuses to hear a party by counsel employed by and appearing for him, in any case, civil or criminal, denies the party a hearing and therefore denies him due process of law in the constitutional sense. Reynolds vs. Cochran, 365 U.S. 525, 5 L.Ed.2d 754, 81 S.Ct. 723.

Non-notification of a hearing to a party who is absent but has an attorney of record is a travesty, a miscarriage of justice. N.C.G.S. 50-16.8(e), as applied in the instant case, is repugnant to the Constitution of the United States. Surely, this case is of significant public interest so as to require plenary consideration by the highest Court in the land.

CONCLUSION

The appellant contends that this case is important; that the State statute as applied is unconstitutional; and respectfully asks this Court to order full argument and to resolve this issue in the appellant's favor. If an appeal is not deemed to be the appropriate mode of review by this Court, your appellant respectfully asks that his appeal be treated as a petition for writ of certiorari.

Respectfully submitted,

John F. Morrow
Counsel for appellant
MORROW, FRASER & REAVIS
Suite 325, NCNB Plaza
Winston-Salem, N. C. 27101

CERTIFICATE OF SERVICE

I certify that on September 10, 1979, I mailed a copy of the foregoing Appeal to the United States Supreme Court to Review the Decision of the North Carolina Supreme Court to B. Ervin Brown, II, attorney for appellee, Suite 315, NCNB Plaza, Winston-Salem, North Carolina 27101.

John F. Morrow
Counsel for appellant
MORROW, FRASER & REAVIS
Suite 325, NCNB Plaza
Winston-Salem, N. C. 27101

APPENDIX A

NORTH CAROLINA)
) IN THE GENERAL COURT OF JUSTICE
FORSYTH COUNTY) DISTRICT COURT DIVISION
77 CVD 4340

ROBERT MICHAEL FUNGAROLI, Plaintiff
vs. ORDER
JUDITH DIANE FUNGAROLI, Defendant

THIS MATTER comes before the Court on the Motion of defendant for alimony pendente lite and for attorneys fees. It appearing to the Court that the plaintiff has left the State of North Carolina, no notice was given of defendant's Motion, and, in the opinion of the Court, none is required pursuant to the provisions of N.C.G.S. §50-16.8(e). The Court having considered the verified Complaint, the verified Answer and Counterclaim, and the Affidavit of defendant, and being otherwise fully advised in the premises, does hereby make the following

FINDINGS OF FACT

1. That the plaintiff, Robert Michael Fungaroli, has left the State of North Carolina and is living presently in Springfield, Virginia.

2. That the plaintiff, Robert Michael Fungaroli, left the State of North Carolina, and carried with him the minor child, Derek Cassidy Fungaroli, after he had filed the instant action, and after the defendant had answered and counterclaimed for alimony, alimony pendente lite, and custody of the minor child, and after this Court had entered an Order herein dated February 18, 1978, requiring the plaintiff to allow the de-

fendant to visit with her minor child, Derek Cassidy Fungaroli.

3. That the defendant is presently unemployed each and every day subsequent to her hospitalization which commenced on December 21, 1977, and ended on February 16, 1978; that the defendant has no income from any source whatsoever at the present time, and has no residence of her own rather than that being presently provided on a temporary basis by her relatives.

4. That the plaintiff is the co-owner of a partnership, Ridgetop Records, located in the City of Winston-Salem, North Carolina, and is therefore gainfully employed.

5. That at no time subsequent to December 21, 1977, has the plaintiff provided the defendant with any subsistence in any form.

6. That commencing on or about the first week of January, 1978, and continuing up and including the present date, the plaintiff has wilfully obstructed defendant in her attempts to return to her home at 317 Lucinda Lane, Kernersville, North Carolina.

Based on the following Findings of Fact, the Court hereby makes the following

CONCLUSIONS OF LAW

1. That the plaintiff is a supporting spouse and the defendant a dependent spouse within the meaning of N.C.G.S. §50-16.1(3),(4).

2. That the plaintiff, Robert Michael Fungaroli, has abandoned the defendant, Judith Diane Fungaroli, and has maliciously turned the defendant out of doors.

3. That the plaintiff, Robert Michael Fungaroli, has offered such indignities to the person of the plaintiff, Judith Diane Fungaroli, as to render her condition intolerable and her life burdensome.

4. That the plaintiff, Robert Michael Fungaroli, has wilfully failed to provide the defendant, Judith Diane Fungaroli, with necessary subsistence according to his means and condition so as to render the condition of the defendant, Judith Diane Fungaroli, intolerable and the life of the defendant burdensome.

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED and DECREED:

1. That commencing on Monday, March 6, 1978, and on each and every Monday thereafter, until further orders of this Court, the plaintiff, Robert Michael Fungaroli, pay to the Forsyth County Clerk of Court, for the support of Judith Diane Fungaroli, alimony pendente lite in the amount of $100.00 per week.

DATED this the 1st day of March, 1978.

/s/ Gary G. Tash
DISTRICT COURT JUDGE

APPENDIX B

No. 7821DC442

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 1979

ROBERT MICHAEL FUNGAROLI

v. Forsyth County
No. 77CVD4340

JUDITH DIANE FUNGAROLI

Appeal by plaintiff from Tash, Judge, and Freeman, Judge. Orders entered 1 March 1978 and 7 March 1978 in District Court, Forsyth County. Heard in the Court of Appeals 5 February 1979.

On 21 December 1977, plaintiff sued for custody of the minor child of plaintiff and defendant. On the same date, plaintiff was granted custody by an ex parte court order. On 18 February 1978, another ex parte order allowed defendant visitation privileges with the child. Still another ex parte order was issued 24 February 1978 for plaintiff to show cause why he should not be punished for contempt for violation of the order of visitation. Defendant answered 28 February 1978, counterclaiming for alimony and child custody. On 1 March 1978, defendant filed motion for alimony pendente lite and on that date a hearing was conducted, and plaintiff was ordered to pay alimony pendente lite to defendant. A hearing on the contempt order was held 6 March 1978, and plaintiff was adjudged to be in contempt. Plaintiff appealed from the orders of 1 March 1978 and 7 March 1978.

Morrow, Fraser & Reavis, by John F. Morrow, for plaintiff appellant.

Stephens, Peed & Brown, by B. Ervin Brown, II, for defendant appellee.

MARTIN (Harry C.), Judge.

Plaintiff first argues the alimony order is invalid as plaintiff was not given notice of the hearing. Defendant's counterclaim for alimony was filed 28 February 1978. At that time, plaintiff had already left the state of North Carolina with the minor child of the parties. On 21 February 1978, an order was issued by the Juvenile and Domestic Relations Court of Fairfax County, Commonwealth of Virginia. This order stated plaintiff and the child were living at 7225 Braddock Road, Springfield, Virginia 22151. The petition of plaintiff in the Virginia court, filed 21 February 1978, alleged under oath that plaintiff and the child lived in Springfield, Virginia.

The trial court, in its order of 1 March 1978, found as facts that plaintiff had left the state of North Carolina, taking with him the child of the parties; plaintiff had not supported defendant in any way since 21 December 1977; plaintiff was gainfully employed, being the co-owner of Ridgetop Records in Winston-Salem; that defendant has no income at all and no residence. The evidence before the court supported the findings of fact. These findings of fact support the conclusions of law by the court that plaintiff had abandoned defendant and left the state of North Carolina; that plaintiff was the supporting spouse and defendant the dependent spouse. Where the supporting spouse abandons the dependent spouse and leaves the state, notice of hearing on motion for alimony pendente lite is not required. N.C. Gen. Stat. 50-16.8; Barker v. Barker, 136 N.C. 316, 48 S.E. 733 (1904). Plaintiff argues that where a party has counsel of record, notice is required to be given to counsel, even though the party has left the state. In Barker, supra, the facts are similar to this case. Plaintiff husband

brought the action for divorce, defendant wife counterclaimed for alimony pendente lite, plaintiff husband left the state, and went to Hot Springs, Arkansas. Plaintiff had counsel of record. Section 1291 of the Code in effect in 1904 was substantially identical to the notice provision now found in N.C.G.S. 50-16.8. The Court held in Barker that notice of hearing was not required.

Service on an attorney of record is service on a party for the reason that the attorney is the agent of the party. If service is not required to be made on a party, it is not necessary to serve his attorney. N.C. Gen. Stat. 1A-1, Rule 5.

Plaintiff by his own conduct eliminated the necessity of service upon him by the notice. The assignment of error is overruled.

Plaintiff contends that the trial court's findings of fact and conclusions of law are insufficient. Plaintiff argues the court failed to find the existence of a marital relationship between plaintiff and defendant. Both plaintiff and defendant allege they are married to each other. This is a judicially established fact and is not required to be stated by the court. The findings of fact and conclusions of law by the court are sufficient to support the order for temporary alimony. Plaintiff failed to appear for the hearing and presented no evidence as to his expenses or income. The order of 1 March 1978 was in accord with N.C.G.S. 50-16. Eudy v. Eudy, 288 N.C. 71, 215 S.E.2d 782 (1975). The assignment of error is overruled.

Plaintiff argues the court erred in not continuing the 6 March 1978 contempt hearing. Plaintiff's counsel says he had been employed only thirty minutes and was not prepared for the hearing. Plaintiff had notice of the contempt hearing. Notice was mailed to plaintiff and his then counsel, G. Edgar Parker, on 24 February 1978. On 3 March 1978,

plaintiff discharged Parker as his attorney. The court allowed Parker to withdraw as attorney on 6 March 1978. Plaintiff had sufficient time to employ new counsel. The record indicates plaintiff was in Forsyth County on the day of the hearing. He contacted attorney Leslie G. Frye of the Forsyth County bar about 10:00 a.m. Plaintiff was referred to attorney John F. Morrow. He was able to talk with Morrow about 1:30 p.m. Yet plaintiff did not appear in court for the hearing.

Motions for continuance are addressed to the sound discretion of the trial court. They are not favored, and the party seeking a continuance bears the burden of showing sufficient grounds. N.C. Gen. Stat. 1A-1, Rule 40(b); Shankle v. Shankle, 289 N.C. 473, 223 S.E.2d 380 (1976). Attorney Morrow made a statement in argument of his motion to continue, but failed to offer any evidence in support of his motion. The trial court had before it the evidence set out above. The chief consideration to be weighed in passing upon the motion to continue is whether the grant or denial will be in furtherance of substantial justice. Id. Plaintiff contends he was prejudiced by the denial of the continuance. Although he made an exception to the entry of the order of 7 March 1978 holding plaintiff in contempt, plaintiff does not attempt to argue any error in his brief with respect to that order. Plaintiff thereby abandoned the execption to the order. Rule 28(a), North Carolina Rules of Appellate Procedure; State v. Wilson, 289 N.C. 531, 223 S.E.2d 311 (1976). We hold the court properly denied plaintiff's motion to continue.

The orders of 1 March 1978 and 7 March 1978 are

Affirmed.

Chief Judge MORRIS and Judge CARLTON concur.

APPENDIX C

No. 29 TWENTY-FIRST DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term 1979

****

ROBERT MICHAEL FUNGAROLI)
)
v.) AMENDED JUDGMENT DISMISSING APPEAL ON MOTION OF DEFENDANT
)
JUDITH DIANE FUNGAROLI) (7821DC442)

****

This matter came on to be considered upon plaintiff's notice of appeal from the North Carolina Court of Appeals pursuant to G. S. 7A-30, and the defendant's motion to dismiss the appeal of the defendant for lack of substantial constitutional question; upon consideration whereof, it is adjudged by the Court in conference this 5th day of June, 1979, that the motion to dismiss the appeal be allowed, and that it be so certified to the North Carolina Court of Appeals.

It is considered and adjudged further that Plaintiff do pay the sum of NINE AND NO/100 DOLLARS ($9.00) and execution issue therefor.

s/ Brock, J.
For the Court

The foregoing order is issued over my hand and the seal of the Supreme Court this 13th day of June, 1979.

s/ John R. Morgan
John R. Morgan

Clerk of the Supreme Court
of North Carolina

cc: North Carolina Court of Appeals
Morrow, Fraser & Reavis, Attorneys at Law
Stephens, Peed & Brown, Attorneys at Law

APPENDIX D

IN THE SUPREME COURT OF THE
STATE OF NORTH CAROLINA

ROBERT MICHAEL FUNGAROLI,)
Appellant)
)
vs.) No. 7821DC442
)
JUDITH DIANE FUNGAROLI,)
Appellee)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES:

NOTICE IS HEREBY GIVEN that Robert Michael Fungaroli, the appellant named above, hereby appeals to the Supreme Court of the United States from the amended judgment of the Supreme Court of North Carolina dismissing the appeal of appellant for lack of a substantial constitutional question entered in this civil action on June 13, 1979.

This appeal is entered pursuant to 28 U.S. C. 1257 (2)(3).

s/ John F. Morrow
John F. Morrow,
Attorney for appellant
Suite 325, NCNB Plaza
Winston-Salem, North Carolina 27101
919/722-9511

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Notice of Appeal to the Supreme Court

of the United States on B. Ervin Brown, II, attorney for appellee, by placing said copy in a postpaid envelope addressed to said attorney at Suite 315, NCNB Plaza, Winston-Salem, North Carolina 27101, which is his last known address, and by placing said envelope and its contents in the United States Mail at Winston-Salem, North Carolina, on September 4, 1979.

s/John F. Morrow
John F. Morrow,
Attorney for appellant
Suite 325, NCNB Plaza
Winston-Salem, North Carolina 27101
919/722-9511

Filed: September 4, 1979